THE MARK O. HATFIELD

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the U.S. District Court for the District of Oregon
A Court Publication Supported by the Attorney Admissions Fund
Vol. XI, No. 11, November 28, 2005

Insurance Law

In this insurance coverage dispute, plaintiff OSAA argued that its costs in defending a suit against it by a third party should be covered under insurance policies it had with defendant. Judge Hubel determined that there was no ambiguity as to the policies being "claims-made" policies, and no ambiguity regarding the provisions requiring that a claim be made and defendant notified during the relevant policy period. Although it was undisputed that the notice plaintiff gave to defendant was made after the expiration of the policy period in which the claim against the plaintiff was made, plaintiff argued that defendant's ability to invoke a late notice defense was subject to defendant showing prejudice. Judge Hubel rejected that argument and concluded that although the Oregon Supreme Court had not expressly ruled on the issue, it would follow the prevailing rule of rejecting the application of the "notice-prejudice" rule to claims-made policies. Oregon School Activities Ass'n v. Nat'l Union Fire Ins. Co., CV-05-214-HU (Opinion, October 13, 2005) Plaintiff's Counsel: Jonathan Radmacher, Kurt Kraemer Defense Counsel: Donald Verfurth, David Silke

Employment Law

A female secretary in an eastern Oregon middle school brought an employment discrimination and common law battery action against her former principal and the school district arising from personal, physical contact between them on school premises during work hours. Although Judge Brown adopted the Findings and Recommendation of Magistrate Judge Jelderks and granted summary judgment in favor of defendants on all discrimination claims, a jury trial was necessary to resolve the common law battery claims. As to that question, the jury found plaintiff had not met her burden to prove the elements of battery. The case, however, may be noteworthy to the Bar for two reasons:

Judge Brown precluded defendants from offering at trial the testimony of an expert witness (a psychologist who had examined plaintiff) because defendants failed to make a timely disclosure of the expert's opinions and the bases for expert's opinions as required by FRCP 26.

Further, over the school district's contention that, the district's employment of a principal was not the kind of employment relationship that could give rise to vicarious liability for sexual battery under Oregon law, Judge Brown submitted to the jury the question whether any battery of the plaintiff by the principal occurred within the course and scope of his employment. Beyer v. Baker, CV 03-714-BR (Opinion, June 6, 2005; Jury Trial, October 16, 2005) Plaintiff's Counsel: Beth Ann Creighton

Defense Counsel: Barrett Mersereau, Nicole Rhoades

Age Discrimination

Plaintiff, a manager at defendant company, had an altercation with a subordinate at work. After investigation, the company terminated plaintiff based on its conclusion that plaintiff inappropriately shoved the subordinate. About a month prior to the incident, plaintiff told his manager that he had hurt his shoulder on-the-job and was about to see a doctor. Plaintiff, who was 58 years old, was replaced by a 42-year-old. Judge King granted summary judgment against plaintiff's workers' compensation discrimination claim but allowed the age discrimination claims to proceed to trial.

Norman v. Blue Heron Paper Company, CV 04-1545-KI
(Opinion, October 28, 2005)
Plaintiff's Counsel: Gordon Allen
Defense Counsel: Maryann Yelnosky

Motion to Remand

Judge Aiken granted plaintiff's motion to remand to state court pursuant to 28 U.S.C. § 1447(c). The court found plaintiff did not waive the non-removability provisions of 28 U.S.C. § 1445(a) by joining FELA claim with other diversity state law claims.

Hughes v. Union Pac. RR, CV 05-6219-AA
(Opinion, November 15, 2005)
Plaintiff's Counsel: Stephen Thompsen
Defense Counsel: Margaret Hoffman

Copyright

Plaintiff contended that Gunter Elkan, a German Jew who emigrated to Canada after being freed from a concentration camp, invented the board game Strategy, copyrighted it, and sent a copy to Milton Bradley in 1948 for evaluation. Elkan's heirs were unaware of his full history until after his death when they came across the copyright registration. They sued Hasbro, the successor to Milton Bradley, for copyright infringement by its game Stratego. Hasbro contended that Stratego was invented in the early 1940s by a Dutch Jew who also survived a concentration camp, trademarked his game through an intermediary during the Nazi occupation of the Netherlands, and eventually licensed Stratego to Hasbro. Because the people with personal knowledge of the transactions have all died, the evidence includes explanations of paper rationing in the Netherlands during World War II and the country's official 1947 change of the rules of spelling and grammar. Judge King granted summary judgment to Hasbro after concluding that it did not have sufficient access to Strategy for copying.

Estate of Elkan v. Hasbro, Inc., CV 04-1344-KI
(Opinion, November 18, 2005)
Plaintiff's Counsel: Roy Thompson
Defense Counsel: Suzanne Lacampagne, Jonathan Moskin

Insurance - Duty to Defend

Judge Aiken granted plaintiff's partial motion for summary judgment finding that plaintiff has no duty to defend an action brought against its insured and denied defendant Wolf's cross-motion for summary judgment.

The court agreed with plaintiff that the sexual assault of a minor by an adult has been expressly held to be the type of conduct where an intent to harm will be inferred as a matter of law.

State Farm v. Wolf, CV 05-722-AA
(Opinion, November 16, 2005)
Plaintiff's Counsel: J. Philip Parks
Defense Counsel: Scott Pratt, Truman Stone

3 The Courthouse News